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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/041,690	01/08/2002	Ronald L. Lewis JR.	10645-1U1	5447

7590 02/28/2005

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EXAMINER

LERNER, MARTIN

ART UNIT	PAPER NUMBER
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2654

DATE MAILED: 02/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/041,690	LEWIS, RONALD L.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Martin Lerner	2654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 to 4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 to 4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/12/2002</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Objections*

1. Claims 1 to 4 are objected to because of the following informalities:

In claim 1, there is a word missing before "activation of the synthesizer".

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by *Bird*.

Regarding independent claim 1, *Bird* discloses a musical bottle, comprising:

"an alcoholic beverage container shaped housing" – liquor bottle 2, which can be blue, brown, or green glass, or possibly clear glass having an upper portion, with neck 4, a lower portion 5 with bottom 6; bottle 2 further has a recess 8 (column 2, lines 40 to 46: Figure 1);

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“a sound synthesizer in the housing” – disc 12 can record and play music or spoken words; a control circuit 16, which can be a CPU 26, turns on and plays music or another audio signal such as spoken words (column 2, line 60 to column 3, line 10: Figure 3); thus, disc 12 is a “sound synthesizer” because it can play music or spoken words; disc 12 is “in” the housing because it is attached to recess 8 within the surface of bottom 6 of bottle 2 (Figures 1 to 3);

“a speaker in the housing and operably coupled with the sound synthesizer” – disc 12 has speaker 20 for playing music or spoken words (column 2, lines 60 to 65: Figure 3); speaker 20 is connected to control circuit 16 for turning on and playing music or spoken words from disc 12 (Figure 3); speaker 20 is “in” the housing because it is contained within disc 12, which is attached to recess 8 within the surface of bottom 6 of bottle 2 (Figures 1 to 3);

“a power supply in the housing operably coupled at least with the sound synthesizer” – disc 12 has battery unit 14; CPU 26, for turning on and playing music from disc 12, is connected to battery unit 14 (column 2, line 60 to column 3, line 10: Figure 3); battery unit 14 is “in” the housing because it is contained within disc 12, which is attached to recess 8 within the surface of bottom 6 of bottle 2 (Figures 1 to 3);

“a motion responsive switch in the housing operably coupled to the synthesizer activation of the synthesizer” – disc 12 has phototransistor 18; disc 12 can play or record music or spoken words and be turned on or off based on light activation of the phototransistor 18; when the bottle is placed on a table, the phototransistor 18 is turned off; once the bottle is lifted, the phototransistor is triggered by light reflected by the table

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surface and music plays or a greeting is sounded; phototransistor 18 is contained within disc 12, so that when phototransistor 18 receives signals, battery unit 14 supplies electricity to CPU 26 and control circuit 16, which turns on and plays music or spoken words (column 2, line 60 to column 3, line 19; Figure 3); thus, phototransistor acts as a "motion responsive switch" because it responds to movement of the bottle when lifted; phototransistor is "in" the housing because it is contained within disc 12, which is attached to recess 8 within the surface of bottom 6 of bottle 2 (Figures 1 to 3).

Regarding claim 2, *Bird* discloses disc 12 can record music or spoken words, and has an audio record and play chip (column 2, line 66 to column 3, line 10; column 4, lines 8 to 12); implicitly, an audio record chip that can record music or spoken words must include a microphone.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Bird* in view of *Hornstein et al.*

Concerning claim 3, *Bird* discloses disc 12 can record music or spoken words ("an audible message"), and has an audio record and play chip. (Column 2, Line 66 to Column 3, Line 10; Column 4, Lines 8 to 12) Implicitly, one skilled in the art would know

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that an audio record and play chip must have some form of memory for recording and playing back music or spoken words. However, *Bird* does not expressly disclose a random access memory for storing an audible message. Still, a random access memory is known to be a common form of memory for recording and playing back short messages in solid-state audio chips or integrated circuits. *Hornstein et al.* teaches an audio label, and suggests a prior art audio record and playback card (U.S. Patent No. 4,791,741), comprising random access memory (RAM) for storing audio information. (Column 2, Lines 5 to 24) A random access memory has the advantages of providing a way of digitally storing and playing back audio data, so that the audio recording and playback element can be produced compactly on a chip or integrated circuit. Also, random access memory is superior to read only memory because it can be erased and re-recorded. It would have been obvious to one having ordinary skill in the art to provide a random access memory as taught by *Hornstein et al.* in the audio record and play chip of *Bird* for the purpose of producing an audio record and playback element on a chip or integrated circuit that is compact in size, and can be erased and re-recorded as digital information.

Concerning claim 4, *Bird* discloses liquor bottle 2 has an information display embedded on a removably detachable support. (Column 4, Lines 12 to 32) *Bird* does not expressly state whether the information display embedded on a removably detachable support is a label adhered over bottle 2, but it is well known that liquor bottles generally have labels adhered to the surface to identify contents. However, *Hornstein et al.* teaches an audio label, and suggests label 20 is secured to a product

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by an adhesive 40. (Column 6, Line 40 to Column 7, Line 8: Figures 1, 6, and 9) The audio label is positioned with a peel-away selfstick adhesive 40, and its purpose is to assist in selling or marketing of products on a retail level by producing attention-grabbing noises or a voice message, and may include information or advertising describing the product. (Column 8, Lines 10 to 37) It would have been obvious to removably adhere a label as taught by *Hornstein et al.* over the surface of the bottle of *Bird* for the purpose of providing an audio label that assists in the selling or marketing of products by attention-grabbing noises.

### **Conclusion**

6. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Kondo, Hoshi, Friedl, Barbour, Arad et al., Handy et al., Scott, Rumsey, Croley, Bristow et al., and Moore disclose related art.

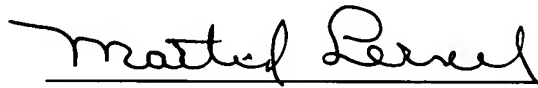
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Martin Lerner whose telephone number is (703) 308-9064. The examiner can normally be reached on 8:30 AM to 6:00 PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil can be reached on (703) 305-9645. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ML  
2/17/05

A handwritten signature in black ink, appearing to read "Martin Lerner", written over a horizontal line.

Martin Lerner  
Examiner  
Group Art Unit 2654